IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/04/2003

CORAM

THE HON'BLE MR. JUSTICE M.KARPAGAVINAYAGAM
AND
THE HON'BLE MR. JUSTICE AR. RAMALINGAM

Crl.Appeal No.706 of 2000

Sivaraj ..Appellant/Accused

-Vs-

State rep. By the Inspector of Police
R-2 Kodambakkam P.S.
(Crime No.300/1989) Chennai ..Respondent/Complainant

Appeal filed under Section 374 Cr.P.C. against the judgment
of conviction and sentence passed by the V Additional Sessions Judge, Chennai
in S.C.No.196/1998 dated 13.7.2000.

!For appellant .. Mr.A.N. Rajan

^For respondent .. Mr.E. Raja, Addl. Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by
M. KARPAGAVINAYAGAM,J.,)

Sivaraj, the appellant herein, was convicted for the offences under Sections 302 and 201 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.3000/-, in default to undergo Rigorous imprisonment for six months for the offence under section 302 I.P.C. and to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for three months for the offence under Section 201 I.P.C. Sentences were ordered to run concurrently.

2. The facts leading to conviction are as follows:

a) The deceased Krishnan was working as a Junior Engineer in Pallavan Transport Corporation at Poonamallee Depot. He was residing along with his wife P.W.7 Vallimeena and his son Muthu at Door No.1, Alagiri Nagar 6th Street, Vadapalani, Chennai. He was running a printing press in one of the

portions of the same house.

b) The accused Sivaraj was working in the said press. He was residing in the same area in one of the rooms in the building which belong to P.W.10 Manivannan. P.Ws.1 and 3 are the brothers of the deceased Krishnan. Some days prior to the date of occurrence, the deceased Krishnan informed P.Ws.1 and 3 that his employee Sivaraj, the accused herein, was not behaving properly and as such, he decided to stop him from service.

c) On 31.1.1989 night at about 10.00 p.m., the deceased Krishnan went to P.W.5 along with the accused and gave composing work and the deceased asked P.W.5 to send the proof on the next day morning. Thereafter, they came back to the house of the deceased.

d) The deceased suspected that the accused had illicit intimacy with his wife P.W.7. On coming to know that the deceased had known about the illicit intimacy and decided to terminate him from service, the accused planned to kill him.

e) On 31.1.1989, P.W.7 was not available in the house. She was staying at Madurai along with his mother. Taking advantage of the absence of P.W.7, the accused decided to execute his plan of murdering the deceased. Accordingly, the accused with aruval M.O.13 murdered the deceased inflicting injuries on the deceased, thereby caused the death of the deceased and cut the body into several pieces and packed in a gunny bag and brought to 100 feet road and burnt the dead body by setting fire to the gunny bag in order to cause disappearance of the evidence.

f) When P.W.4 Ukalingam, who belong to that area, came to the spot for answering the nature's call in the early morning of 1.2.1989, he happened to see the accused burning something in the scene place. He did not suspect anything at that time. At 10.00 a.m., P.W.2, a tea shop owner, having tea shop which is opposite to the place where the body was burnt, happened to see the dead body. Then, he went to the police station and gave Ex.P.1 complaint at about 11.00 a.m. to P.W.1 7 Inspector of Police.

g) P.W.17 registered a case in Crime No.300/1989 for the offence under Section 302 I.P.C. He prepared Ex.P.16 Printed First Information Report. He took up investigation and went to the scene place and noticed that a dead body was found in eight pieces partly burnt. He prepared Ex.P.17 observation mahazar and Ex.P.18 rough sketch. He conducted inquest over the dead body. Ex.P.19 is the Inquest Report. He recovered clothe pieces, plantain pieces and partly burnt gunny bag etc., i.e. M.Os. 2 to 9 from the scene of occurrence.

h) P.W.1 and P.W.3, brothers of the deceased contacted the Inspector of Police P.W.17, who in turn took them to the General Hospital to identify the body of the deceased. Accordingly, the body was identified as that of the body of the deceased by P.Ws.1 and 3 on 2.2.1989.

i) On the same day, P.W.17 arrested the accused. On his confession, M.O.9 gold ring, M.O.15 cycle, M.O.13 billhook belonged to the deceased, M.O.11 pant, M.O.12 shirt clothes of the accused, M.O.14 pillow cover were recovered.

j) In the meantime, the Doctor one Neela Govindaraj who received the fragments of human body of the deceased noticed that parts were partly burnt. She conducted post mortem on 1.2.1989. P.W.15 Dr. Kamala Anandaraman, who acquainted with the signature of Dr. Neela Govindaraj, has stated that the said Doctor opined that the deceased would appear to have died of decapitation of head from trunk. Ex.P.8 is the post-mortem certificate issued by Dr. Neela Govindaraj.

k) P.W.17 continued the investigation and examined other witnesses. He sent the accused for Judicial remand. He made arrangements for sending the material objects for chemical examination. He also examined P.W.7, the wife of the deceased. He also arranged for recording the statement from P.W.4 by the Judicial Magistrate.

l) The successor of P.W.17, viz., one Rajamani, Inspector of Police after verifying the investigation done by P.W.17 and after completing the investigation, laid the charge sheet against the accused for the offences under Sections 302 and 201 I.P.C.

m) During the course of trial, the prosecution examined P.Ws.1 to 1 7, filed Exhibits P.1 to P.27 and marked M.Os.1 to 15 before the trial Court.

n) When the accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He further stated that though he was working under the deceased for some time, he voluntarily stopped from service and as such he had no reason to commit the murder of the deceased.

o) The trial Court, having regard to the circumstances available on record, concluded that the prosecution has established its case beyond reasonable doubt and convicted the accused for the offences under sections 302 and 201 I.P.C. and sentenced him thereunder. This is the subject matter of challenge in this appeal before this Court filed by the appellant.

3) Mr. A.N. Rajan, learned counsel appearing for the appellant while assailing the judgment impugned, would take us through the entire evidence and contend that the circumstances projected by the prosecution do not clinchingly prove the guilt of the accused and those circumstances are not sufficient to fasten the criminal liability on the accused and as such, he is entitled to be acquitted.

4) Per contra, Mr. E Raja, learned Additional Public Prosecutor would submit that the circumstances brought out by the prosecution are cogent and those circumstances would be sufficient to hold that the accused was guilty of the offences with which he was charged.

5) We have carefully considered the rival contentions of the counsel for the parties and also gone through the records.

6) This case is based upon only circumstantial evidence. It is settled law that in a case of circumstantial evidence, the prosecution has to establish satisfactorily each circumstance and those circumstances must form a complete chain without any missing link and the same should unerringly point to the guilt of the accused without giving any room for hypothesis of the innocence of the accused.

7) In the light of these settled principles as laid down by this Court as well as by the Apex Court, let us now analyse the circumstances.

8) The circumstances brought on record by the prosecution are as follows:

a) Motive;
b) The deceased was last seen alive in the company of the accused by P.W.5;
c) P.W.4 saw the accused burning something in the scene of occurrence at the relevant time;
d) The accused alone was seen in the printing press belonging to the deceased on 1.2.1989 by P.W.5 and P.W.8 to whom the accused told that the deceased had gone for his job;
e) P.W.9 room-mate of the accused stated that the accused did not turn up on 31.1.1989 and on the next day morning i.e. on 1.2.1989, he came and washed his clothes; and
f) The arrest of the accused and recovery of aruval, gold ring, cycle belonged to the deceased and clothes of the accused as spoken to by P.W.17 Inspector of Police and P.W.11 mahazar witness.

9) On these materials, the prosecution has sought to prove that the offences have been committed by the accused. Let us now analyse the circumstances one by one.

10) The motive attributed for the murder against the accused is that the accused had illicit intimacy with P.W.7, the wife of the deceased. But, no witness would refer to this aspect of illicit intimacy of the accused with P.W.7, the wife of the deceased. P.Ws.1 and 3, brothers of the deceased, of course, would state that they were informed by the deceased some days prior to the date of occurrence, that the activities of the accused were not good and so, he decided to terminate him from service. But, P.Ws.1 and 3 would never state that the deceased suspected that there was illicit intimacy between his wife and the accused. Therefore, it cannot be said that the accused was in any way aggrieved person. On the other hand, as evident from the evidence of P.Ws.1 and 3, the deceased was the aggrieved person, since he felt that the accused did not behave properly.

11) One other witness examined to prove that there was illicit intimacy between the accused and P.W.7, the wife of the deceased, is P.W.10. P.W.10 is the landlord. The accused was residing in one of the rooms in the building which belongs to P.W.10. According to P.W.10, some days prior to the date of occurrence, the wife of the deceased came and met the accused in his room. However, even P.W.10 was not specific that P.W.7, the wife of the

deceased came and met the accused. He simply stated that the accused told him that an employee came and visited him. Furthermore, the proper witness who could speak about the alleged intimacy is the wife of the deceased viz., P.W.7. In this case, the wife of the deceased was examined as P.W.7. Strangely, she did not refer to the intimacy between the accused and herself. She has not even stated that the deceased suspected her fidelity over her alleged intimacy with the accused. Therefore, the motive aspect, in our view, has not been clearly established.

12) It is the evidence of P.W.5 that the deceased was seen alive in the company of the accused. P.W.5 was doing composing work. On 31.1.1989, both the accused and the deceased came to him and handed over the work for composing. P.W.5 was asked to give the proof on the next day morning. It was about 10.00 p.m. on 31.1.1989. This would make it clear that the accused accompanied the deceased and as such, till then, he was not terminated from service. Next day, accused alone was there in the press. P.W.5 came in the morning and gave the proof to the accused to be shown to the deceased and again when he came in the evening for verification as to whether the proof had been approved by the deceased or not, the accused told him that the deceased had gone for his job and did not turn up. Similarly, when P.W.8, the co-brother of the deceased also came and visited the house of the deceased on 1.2.1989, the accused told him also that the deceased had gone for his job and did not come back. From this evidence, the prosecution seeks to prove that after committing the murder of the deceased, the accused came back to the press and was looking after the business to show as if he did not commit the murder.

13. A perusal of the evidence of P.Ws.5 and 8, even assuming it to be true, would not show that the accused was present in order to create a evidence that he did not participate in the occurrence and he was just showing that he was attending the work. On the other hand, the very fact that the accused attended the office on 1.2.1989 would indicate that he was regularly coming to the office for doing his job. There is nothing to indicate that after the occurrence, he made attempt to abscond himself from the scene of occurrence. Therefore, mere presence of the accused on 1.2.1989 in the press as spoken to by P.Ws.5 and 8 would not show that the accused was the culprit.

14) Of course, P.W.9, the room-mate of the accused was examined for the purpose of showing that the accused did not turn up on 31.1.1989 night. But, actually, he was examined to speak that the accused came in the morning of 1.2.1989 and washed his clothes. But, this has not been spoken to by him and so, he was treated as hostile. Therefore, the evidence of P.Ws.5, 8 and 9 would, not be of much use for prosecution.

15) P.W.2 on seeing the partly burnt cut pieces of dead body of the deceased on 1.2.1989 at 10.00 a.m., went to the police station and gave Ex.P.1 complaint to P.W.17 Inspector of Police. P.W.17 went to the scene place and saw the eight cut pieces partly burnt. It is the evidence of P.Ws.2 and 17 that some parts of the body were eaten by foxes and dogs.

16) P.W.15, the Doctor, who is acquainted with the signature of

Dr.Neela Govindaraj, the post-mortem Doctor, would state that Dr. Neela Govindaraj conducted the post-mortem on 1.2.1989 and issued Ex.P.8 Post-mortem certificate. According to P.Ws.1 and 3, they identified the body as that of the deceased only on 2.2.1989. Admittedly, P.W.7, the wife of the deceased did not come to the hospital to identify the body. She was only examined on 6.2.1989 and she saw the photograph of the head of the deceased and identified the head as that of her husband.

17. Photographs were shown to the witnesses. Unfortunately, those photographs as well as the negatives, have not been produced before the Court so as to enable the Court to see whether the same are identifiable. As stated above post-mortem was conducted on 1.2.1989 itself. It is not known as to how P.Ws.1 and 3 were able to identify the body of the deceased on 2.2.1989.

18) Admittedly, no steps have been taken by P.W.17, the Investigating Office for conducting super imposition test to establish that the 8 pieces of the body which were recovered from the scene place belong to the body of the deceased. Thus, the evidence relating to the identity also has not been fully established.

19) The next piece of evidence is the arrest and recovery. Relating to arrest and recovery, we have got the evidence of P.W.11 and P.W.17 . The mahazar witness P.W.11 has turned hostile. So, we have got only the evidence of P.W.17. P.W.17 Investigating Officer would state that the accused was arrested on 2.2.1989 and on his confession, M.O.13 aruval, M.O.9 gold ring, M.O.15 cycle belonging to the deceased were recovered. According to the prosecution, M.O.9 gold ring, M.O.15 cycle and M.O.13 aruval belonged to the deceased. Unfortunately, these articles have not been identified as the properties belong to the deceased by any of the witnesses concerned, viz., P.Ws.1 and 3, brothers of the deceased and P.W.7, the wife of the deceased. Admittedly, these articles had not even been shown to the witnesses in the Court to identify them as properties belonged to the deceased.

20) Though P.W.17 would state in the cross examination that M.O.9 ring was identified by the wife of the deceased, there is no reason as to why the ring was not identified by P.W.7 in the Court. Similarly, M.O.15 cycle was not identified by P.Ws.1, 3 and 7, close relatives of the deceased. It is true that aruval which was recovered on the confession of the accused was found to contain human blood and it tallied with the blood group of the deceased. But this will not be sufficient to connect the accused with the crime, especially when the prosecution case is that the aruval was seized from the house of the deceased.

21. In view of the above infirmities, we are not able to conclude that the circumstances projected by the prosecution against the accused have been satisfactorily explained and those circumstances would form the complete chain without any missing link. Therefore, in our view, the conviction and sentence imposed upon the appellant by the trial Court are not legal and the same are liable to be set aside.

22) In fine, the appeal is allowed and the conviction and sentence imposed upon the appellant/accused by the trial Court are set aside and the

appellant is acquitted. The appellant is directed to be set at liberty forthwith, unless he is required in connection with any other case. Fine amount, if any, paid shall be refunded to the appellant.

Index: Yes
Website: Yes
vbs
To
1. The V Additional Sessions Judge, Chennai.

2 The V Additional Sessions Judge, Chennai through
the Principal Sessions Judge, Chennai.

3. The Superintendent, Central Prison, Chennai.

4. The Public Prosecutor, High Court, Madras

5. The Inspector of Police, R2 Kodambakkam P.S.,Chennai

6. The District Collector, Chennai

7. The Director General of Police, Chennai.

8. The Superintendent, Central Prison, Vellore